

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

ASD SPECIALTY HEALTHCARE, INC. d/b/a)
ONCOLOGY SUPPLY COMPANY,)
Plaintiff,)
v.) CIVIL ACTION NO. 1:05-CV-591-
ONCOLOGY HEMATOLOGY CENTERS OF)
ATLANTA, P.C. and LLOYD G. GEDDES,)
Defendants.)

APPLICATION TO CLERK OF COURT FOR ENTRY
OF DEFAULT JUDGMENT AGAINST DEFENDANT
ONCOLOGY HEMATOLOGY CENTERS OF ATLANTA, P.C.

COMES NOW plaintiff, ASD Specialty Healthcare, Inc., d/b/a Oncology Supply Company (hereafter "Plaintiff" or "ASD"), by and through its counsel, and pursuant to Federal Rule of Civil Procedure 55, files this Application for Entry of Default Judgment against Defendant Oncology Hematology Centers of Atlanta, P.C. (hereafter "Defendant" or "OHCA"). In support of this Application, Plaintiff shows the following:

1. On October 28, 2005, this Plaintiff applied for entry of default against OHCA.
2. On November 2, 2005, the Clerk of this Court entered default against OHCA for its failure to respond or otherwise defend this action.
3. Rule 55(b)(1) provides that "[w]hen the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person."

4. Defendant OHCA was defaulted for its failure to appear and respond to this action.

5. Defendant OHCA is not an infant or incompetent person. (See Ex. A, Aff. of Heath A. Fite ¶ 4.)

6. Plaintiff's claim against Defendant OHCA is for a sum certain or for a sum which can by computation be made certain.

7. As of May 26, 2005, the total outstanding obligation due to ASD from OHCA exceeded \$155,028.90 for goods sold and delivered to OHCA. (See Ex. B, Aff. of Kelly Lewis ¶¶ 3-5.) Accordingly, ASD filed the instant action against OHCA seeking \$155,028.90, plus interest at the contractual rate of eighteen per cent (18%) per annum on each outstanding invoice, attorney fees, and costs. (See *id.* ¶ 5.)

8. Subsequently, by virtue of certain payments remitted by Defendant Lloyd G. Geddes, Jr., the principal amount owed has been reduced to \$101,676.57. (See *id.* ¶ 6.)

9. As of October 28, 2005, the balance due, including interest, is **\$117,725.41**. (See *id.* ¶ 7.)

10. In its Complaint, Plaintiff also seeks attorney fees incurred in collecting the debt as provided for by the contract between Plaintiff and OHCA. (Compl. ¶¶ 21, 28, 36, 40, 44, and Exhibit 1 attached thereto.)

11. To date, Plaintiff has incurred attorney fees in the amount of \$7,005.00 in attempting to collect this debt. (See Ex. A ¶ 6.)

12. All the preconditions under Rule 55(b)(1) for entry of default judgment against Defendant OHCA by the Clerk of this Court have been met.

13. Accordingly, Plaintiff hereby moves this Court for entry of default judgment against Defendant OHCA in the amount of \$117,725.41, plus \$7,005.00 in attorney fees, plus costs of this action.

WHEREFORE, Plaintiff respectfully requests that the Clerk of Court enter default judgment against Defendant OHCA in the amount of \$117,725.41, plus \$7,005.00 in attorney fees, plus costs of this action, and is attaching a proposed Order granting this request as Exhibit C.

Respectfully submitted,

/s/ Heath A. Fite
James J. Robinson (ROB013)
Heath A. Fite (FIT011)
Attorneys for Plaintiff

OF COUNSEL:

BURR & FORMAN, LLP
3100 Wachovia Tower
420 North 20th Street
Birmingham, Alabama 35203

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 2005, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all properly registered parties. I hereby certify that on the 7th day of November, 2005, I served the following by directing the same to their office addresses through first-class, United States mail, postage prepaid:

Raquel Gayle,
Registered Agent for OHICA
Powell Goldstein
1201 West Peachtree Street
14th Floor
Atlanta, GA 30309

Lloyd G. Geddes, Jr. MD
Oncology Hematology Centers of Atlanta, P.C.
465 Winn Way, Suite 231
Decatur, Georgia 30030

/s/ Heath A. Fite
Of Counsel